

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**TERENCE B. BENJAMIN, SR.**

**PLAINTIFF**

**v.**

**CAUSE NO. 1:14CV115-LG-JCG**

**HARRISON COUNTY and  
STATE OF MISSISSIPPI**

**DEFENDANTS**

**ORDER GRANTING THE STATE OF  
MISSISSIPPI'S MOTION TO DISMISS**

**BEFORE THE COURT** is the Motion to Dismiss [23] filed by the State of Mississippi. The plaintiff Terence B. Benjamin, Sr., did not file a response to the Motion. After reviewing the Motion, the record in this matter, and the applicable law, the Court finds that the Motion to Dismiss should be granted

**BACKGROUND**

Terence B. Benjamin, Sr., pled guilty to felony driving under the influence in the First Judicial District of the Circuit Court of Harrison County, Mississippi. In an Order entered on November 16, 2010, Benjamin was sentenced to five years imprisonment with two years suspended, leaving three years to serve. The court further ordered that Benjamin would not be released from prison until he successfully completed the Long Term Drug and Alcohol Rehabilitation Program. In a separate cause number, Benjamin was re-sentenced on March 12, 2012, to eight years imprisonment to run consecutive to the sentence imposed in the November 16, 2010 Order.

On March 6, 2014, Benjamin filed the present lawsuit against Harrison County and the State of Mississippi, claiming that the November 16, 2010 Order

was illegal, because it was incorrect and incomplete. He also claimed that the March 12, 2012 re-sentencing was improper, because he was not represented by counsel at the re-sentencing hearing. As a result of these alleged issues, Benjamin claims that he was “lost in the system,” and he seeks \$25,000,000 in damages. There is no indication that Benjamin filed an appeal or a petition for a writ of habeas corpus related to either conviction or sentence. Benjamin has since been released from custody. Harrison County filed a Motion to Dismiss, which was granted pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). The only remaining defendant, the State of Mississippi, now seeks dismissal pursuant to the Eleventh Amendment.

### DISCUSSION

“The Eleventh Amendment prohibits a private citizen from bringing suit against a state in federal court unless the state consents.” *Salinas v. Tex. Workforce Comm’n*, 573 F. App’x 370, 372 (5th Cir. 2014) (quoting *Daigle v. Gulf State Utilities Co.*, 794 F.2d 974, 980 (5th Cir. 1986)). The State of Mississippi has not waived sovereign immunity for lawsuits filed in federal court. *See* Miss. Code Ann. § 11-46-5(4) (“Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.”). Since Benjamin is attempting to sue the State of Mississippi in federal court, his claims are barred by the Eleventh Amendment. Therefore, the State of Mississippi’s Motion to Dismiss must be granted.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that the Motion to

Dismiss [23] filed by the State of Mississippi is **GRANTED**. Terence B. Benjamin Sr.'s claims against the State of Mississippi are hereby **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

**SO ORDERED AND ADJUDGED** this the 14<sup>th</sup> day of September, 2015.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.  
CHIEF U.S. DISTRICT JUDGE